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month of receipt the unspent portion of any title II or title XVI retroactive payment received before March 2, 2004. This exclusion also applies to such payments received by any other person whose resources are subject to deeming under this subpart.

(b) *Retroactive payments.* For purposes of this exclusion, a retroactive payment is one that is paid after the month in which it was due. A title XVI retroactive payment includes any retroactive amount of federally administered State supplementation.

(c) *Limitation on exclusion.* This exclusion applies only to any unspent portion of retroactive payments made under title II or XVI. Once the money from the retroactive payment is spent, this exclusion does not apply to items purchased with the money, even if the 6-month or 9-month period, whichever is applicable (see paragraph (a) of this section), has not expired. However, other exclusions may be applicable. As long as the funds from the retroactive payment are not spent, they are excluded for the full 6-month or 9-month period, whichever is applicable.

(d) *Funds must be identifiable.* Unspent money from a retroactive payment must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds but, if this is done in such a fashion that the retroactive amount can no longer be separately identified, that amount will count toward the resource limit described in § 416.1205.

(e) *Written notice.* We will give each recipient a written notice of the exclusion limitation when we make the retroactive payment.

[51 FR 34464, Sept. 29, 1986, as amended at 54 FR 19164, May 4, 1989; 70 FR 41138, July 18, 2005]

§ 416.1234 Exclusion of Indian lands.

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, we will exclude any interest of the individual (or spouse, if any) in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other

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individuals, his or her tribe, or an agency of the Federal Government.

[59 FR 8538, Feb. 23, 1994]

§ 416.1235 Exclusion of earned income tax credit.

In determining the resources of an individual (and spouse, if any), we exclude for the 9 months following the month of receipt the unspent portion of any refund of Federal income taxes under section 32 of the Internal Revenue Code (relating to earned income tax credit) and the unspent portion of any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of earned income tax credit). This exclusion applies to such refunds and such payments received on or after March 2, 2004. Any unspent funds retained until the first moment of the tenth month following their receipt are subject to resource counting at that time. *Exception:* We will exclude for the month following the month of receipt the unspent portion of any refund of Federal income taxes under section 32 of the Internal Revenue Code (relating to earned income tax credit) and the unspent portion of any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of earned income tax credit) received before March 2, 2004.

[70 FR 41138, July 18, 2005]

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) For the purpose of § 416.1210(j), payments or benefits provided under a Federal statute other than title XVI of the Social Security Act where exclusion from resources is required by such statute include:

(1) Payments made under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1902, 42 U.S.C. 4636).

(2) Payments made to Native Americans as listed in paragraphs (b) and (c) of section IV of the appendix to subpart K of part 416, as provided by Federal statutes other than the Social Security Act.

(3) Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a

plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93-134, as amended by Public Law 97-458 (25 U.S.C. 1407). Indian judgment funds include interest and investment income accrued while the funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion will not apply to proceeds from sales or conversions of initial purchases or to subsequent purchases.

(4) The value of the coupon allotment in excess of the amount paid for the coupons under the Food Stamp Act of 1964 (78 Stat. 705, as amended, 7 U.S.C. 2016(c)).

(5) The value of assistance to children under the National School Lunch Act (60 Stat. 230, 42 U.S.C. 1751 *et seq.*) as amended by Pub. L. 90-302 (82 Stat. 117, 42 U.S.C. 1761(h)(3)).

(6) The value of assistance to children under the Child Nutrition Act of 1966 (80 Stat. 889, 42 U.S.C. 1780(b)).

(7) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education as provided by section 507 of the Higher Education Amendments of 1968, Pub. L. 90-575 (82 Stat. 1063).

(8) Incentive allowances received under title I of the Comprehensive Employment and Training Act of 1973 (87 Stat. 849, 29 U.S.C. 821(a)).

(9) Compensation provided to volunteers by the Corporation for National and Community Service (CNCS), unless determined by the CNCS to constitute the minimum wage in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*), or applicable State law, pursuant to 42 U.S.C. 5044(f)(1).

(10) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, is disregarded to the extent that it does not, in the aggregate, exceed \$2,000 per individual each year (the \$2,000 limit is applied separately each year, and cash distributions up to \$2,000 which an indi-

vidual received in a prior year and retained into subsequent years will not be counted as resources in those years); stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to the exclusion under section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100-241 (43 U.S.C. 1626(c)), effective February 3, 1988.

(11) Value of Federally donated foods distributed pursuant to section 32 of Pub. L. 74-320 or section 416 of the Agriculture Act of 1949 (7 CFR 250.6(e)(9) as authorized by 5 U.S.C. 301).

(12) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under Public Law 98-64. Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from resources under this exclusion. For the treatment of ANRVC dividend distributions, see paragraph (a)(10) of this section.

(13) Home energy assistance payments or allowances under the Low-Income Home Energy Assistance Act of 1981, as added by title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35 (42 U.S.C. 8624(f)).

(14) Student financial assistance for attendance costs received from a program funded in whole or in part under title IV of the Higher Education Act of 1965, as amended, or under Bureau of Indian Affairs student assistance programs if it is made available for tuition and fees normally assessed a student carrying the same academic workload, as determined by the institution, including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at

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least a half-time basis, as determined by the institution, under section 14(27) of Public Law 100-50, the Higher Education Technical Amendments Act of 1987 (20 U.S.C. 1087uu), or under Bureau of Indian Affairs student assistance programs.

(15) Amounts paid as restitution to certain individuals of Japanese ancestry and Aleuts under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act, sections 105(f) and 206(d) of Public Law 100-383 (50 U.S.C. app. 1989 b and c).

(16) Payments made on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.) under Public Law 101-201 (103 Stat. 1795) and section 10405 of Public Law 101-239 (103 Stat. 2489).

(17) Payments made under section 6 of the Radiation Exposure Compensation Act, Public Law 101-426 (104 Stat. 925, 42 U.S.C. 2210).

(18) Payments made to individuals because of their status as victims of Nazi persecution excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, Public Law 103-286 (108 Stat. 1450).

(19) Any matching funds and interest earned on matching funds from a demonstration project authorized by Public Law 105-285 that are retained in an Individual Development Account, pursuant to section 415 of Public Law 105-285 (112 Stat. 2771).

(20) Any earnings, Temporary Assistance for Needy Families matching funds, and accrued interest retained in an Individual Development Account, pursuant to section 103 of Public Law 104-193 (42 U.S.C. 604(h)(4)).

(21) Payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations, pursuant to section 606 of Public Law 105-78 and section 657 of Public Law 104-201 (110 Stat. 2584).

(22) Payments made to certain Vietnam veterans' children with spina bifida, pursuant to section 421 of Public Law 104-204 (38 U.S.C. 1805(d)).

(23) Payments made to the children of women Vietnam veterans who suffer

from certain birth defects, pursuant to section 401 of Public Law 106-419, (38 U.S.C. 1833(c)).

(24) For the 9 months following the month of receipt, any unspent portion of any refund of Federal income taxes under section 24 of the Internal Revenue Code of 1986 (relating to the child care tax credit), pursuant to section 431 of Public Law 108-203 (118 Stat. 539).

(b) In order for payments and benefits listed in paragraph (a) to be excluded from resources, such funds must be segregated and not commingled with other countable resources so that the excludable funds are identifiable.

[41 FR 13338, Mar. 30, 1976, as amended at 42 FR 44221, Sept. 2, 1977; 42 FR 54945, Oct. 12, 1977; 43 FR 45555, Oct. 3, 1978; 57 FR 53851, Nov. 13, 1992; 57 FR 55089, Nov. 24, 1992; 59 FR 8538, Feb. 23, 1994; 62 FR 30983, June 6, 1997; 70 FR 41138, July 18, 2005]

§ 416.1237 Assistance received on account of major disaster.

(a) Assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a Federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States or comparable assistance received from a State or local government, or from a disaster assistance organization, is excluded in determining countable resources under § 416.1210.

(b) Interest earned on the assistance is excluded from resources.

[57 FR 53852, Nov. 13, 1992]

§ 416.1238 Exclusion of certain housing assistance.

The value of any assistance paid with respect to a dwelling under the statutes listed in § 416.1124(c)(14) is excluded from resources.

[55 FR 28378, July 11, 1990]

§ 416.1239 Exclusion of State or local relocation assistance payments.

In determining the resources of an individual (or spouse, if any), relocation assistance provided by a State or local government (as described in